

Michigan Department of Health and Human Services (MDHHS or Department)  
**MEMORANDUM**  
Lansing, MI

Date: November 4, 2022

TO: Donald Haney, Chairperson, CON NH-HLTCU Informal Workgroup

FROM: Kenneth Wirth, Policy Analyst, MDHHS

RE: Draft Language for Certificate of Need (CON) Nursing Home and Hospital Long-Term-Care Unit (NH-HLTCU) Informal Workgroup

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The CON NH-HLTCU Informal Workgroup requested at its October 6, 2022 meeting that the Department provide draft language for their consideration on multiple charges assigned to the workgroup by the CON Commission.

**Charge #1:** Review definitions for clarity and consistency [Section 2].

Section 2(1)(aa) currently reads:

(aa) "Replacement bed" means a change in the location of the licensed nursing home/HLTCU, the replacement of a portion of the licensed beds at the same licensed site, or the replacement of a portion of the licensed beds pursuant to the new model design. The nursing home/HLTCU beds will be in new physical plant space being developed in new construction or in newly acquired space (purchase, lease, donation, etc.) within the replacement zone.

Section 2(1)(aa) as amended will read:

(aa) "Replacement bed" means any of the following:

- (i) a change in the location of the licensed nursing home/HLTCU,
- (ii) the replacement of a portion of the licensed beds at the same licensed site,
- (iii) the replacement of a portion of the licensed beds pursuant to the new model design,
- (iv) the nursing home/HLTCU beds will be in new physical plant space being developed in new construction or in newly acquired space (purchase, lease, donation, etc.) within the replacement zone.

Section 2(1)(bb) currently reads:

(bb) "Replacement zone" means a proposed licensed site that is,

- (i) for a rural or micropolitan statistical area county, within the same planning area as the existing licensed site.
- (ii) for a county that is not a rural or micropolitan statistical area county,
  - (A) within the same planning area as the existing licensed site and
  - (B) within a three-mile radius of the existing licensed site.

**Charge #5:** Review adding language regarding QAAP, PASSAR, and CMP to requirements for renewal of lease applications [Section 9(3)].

Section 9(3) currently reads:

- (3) An applicant proposing to renew the lease for an existing nursing home/HLTCU shall not be required to be in compliance with the needed nursing home bed supply for the planning area in which the nursing home/HLTCU is located, if all of the following requirements are met:
- (a) The lease renewal will not result in a change in bed capacity.
  - (b) The licensed site does not change as a result of the lease renewal.
  - (c) A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.

Section 9(3) as amended will read:

- (3) An applicant proposing to renew the lease for an existing nursing home/HLTCU shall not be required to be in compliance with the needed nursing home bed supply for the planning area in which the nursing home/HLTCU is located, if all of the following requirements are met:
- (a) The lease renewal will not result in a change in bed capacity.
  - (b) The licensed site does not change as a result of the lease renewal.
  - (c) A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.
  - (d) All delinquent debt obligations to the State of Michigan have been paid including, but not limited to:
    - (i) Quality Assurance Assessment Program (QAAP)
    - (ii) Preadmission Screening and Annual Resident Review (PASARR)
    - (iii) Civil Monetary Penalties (CMP)

**Charge #6:** Consider adding language to Section 11 that would require facilities remain current on taxes, fines, and fees.

New Section 11(6):

- (6) The applicant shall agree that, if approved, it will remain current on all taxes, fines, and fees owed to the State of Michigan including, but not limited to:
- (a) Quality Assurance Assessment Program (QAAP)
  - (b) Preadmission Screening and Annual Resident Review (PASARR)
  - (c) Civil Monetary Penalties (CMP)

**Charge #7:** Consider adding language to Section 11(2) to ensure beds are operated in an appropriate manner for the population to be served like Psychiatric Beds and Services.

Current language existing within CON Psychiatric Beds and Services Review Standards can be found within the Project Delivery Requirements [Section 13(2)(a)]:

The proposed licensed psychiatric beds shall be operated in a manner that is appropriate for a population with the ethnic, socioeconomic, and demographic characteristics including the developmental stage of the population to be served.

This language has remained unchanged within CON Psychiatric Beds and Services Review Standards since 1988. The Department recommends that the NH-HLTCU Informal Workgroup review and update currently existing language utilizing existing programs aimed at delivering appropriate services (e.g., National Standards for Culturally and Linguistically Appropriate Services by the Office of Minority Health) for inclusion in the CON Nursing Home and Hospital Long-Term-Care Unit Beds/Services Review Standards.

Section 11(2)(e), (f) will read:

- (e) The applicant shall provide 24/7 availability of appropriate methods and tools to communicate with patients who are non-English speaking patients, including but not limited to the use of translation and/or interpretation services, or other communication technology, as necessary.
- (f) The applicant shall agree to provide patient-centered and culturally competent care to patients, including but not limited to:
  - (i) culturally relevant meals, decorations, celebrations, or music.
  - (ii) visits from spiritual leaders and other individuals of the same ethnic background.
  - (iii) opportunities for the resident and family to share information about their culture with other residents, family, and staff.

**Charge #8:** Consider language for a Public Health Epidemic.

CON Review Standards for MRI include the following definition:

Section 2(1)(II) "Public health epidemic" means an epidemic identified and controlled pursuant to MCL 333.2253(1) or MCL 333.2453(1), or an epidemic or pandemic as declared by the Centers for Disease Control (CDC) or the World Health Organization (WHO).

The following language appears in CON Review Standards for MRI, Section 4, Requirements to replace an existing MRI unit:

Section 4(5)(c) "... If the application is utilizing an MRI list where the Department determines that the reporting period is impacted by a public health epidemic and the facility was prevented by law from operating at full capacity due to the public health epidemic, the applicant may annualize their MRI adjusted procedures and shall include only those months and procedures performed when the facility was not prevented by law from operating at full capacity due to the public health epidemic. If using annualized data, the applicant shall submit an affidavit confirming the months that the facility was prevented by law from operating at full capacity due to the public health epidemic."

**Charge #10:** Consider any other technical changes from the Department, e.g., updates or modifications consistent with other CON review standards and the Michigan Public Health Code.

Consistent with the workgroup's Charge #5 recommendation to remove the Bureau reference, the following sections will also be updated:

Section 6(1)(c)  
Section 6(2)(e)  
Section 7(1)(e)  
Section 7(2)(e)  
Section 7(3)(e)  
Section 8(2)(c)

Section 9(1)(e)  
Section 9(1)(f)  
Section 9(1)(g)(i)  
Section 9(2)(c)  
Section 9(2)(d)  
Section 9(2)(e)(i)